

# **EXHIBIT B**

UNITSTATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

NO. 1:10-CV-156-SM

\* \* \* \* \*  
ALVIN B. GALUTEN, MD, PSC \*  
\*  
vs. \*  
\*  
MEDICUS RADIOLOGY STAFFING, LLC \*  
\*  
\* \* \* \* \*

DEPOSITION OF ABBOTT GRANT SMITH

Deposition taken at the law offices of  
Sheehan, Phinney, Bass + Green, 1000 Elm  
Street, Manchester, New Hampshire, on Friday,  
April 8, 2011, commencing at 2:13 p.m.

Court Reporter:

Denise Cascio Bolduc, LCR, RPR  
NH Licensed Court Reporter No. 32  
(RSA 310-A:161-181)

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1 discussing any other topics.

2 Q. BY MR. HOWARD: Do you recall, Mr. Smith, if after  
3 the conversation on or about the 14th if you had  
4 any other telephone conversations with Dr. Galuten?

5 A. I don't believe I did.

6 Q. And based on your earlier testimony, is it fair for  
7 me to conclude that you didn't have any telephone  
8 conversations with him prior to the 14th? If I  
9 didn't say telephone conversations, I meant to.

10 We've already covered in-person conversations.

11 A. I can't think of a specific additional time that I  
12 had a phone conversation with Dr. Galuten, but I'm  
13 not a hundred percent sure.

14 Q. All right. Do you recall if you personally had any  
15 email communication with Dr. Galuten?

16 A. I don't recall.

17 Q. Based on the email that's in Exhibit 15, it  
18 suggests in there that Dr. Galuten's last day of  
19 service prior to taking the time off would be  
20 May 20.

21 Do you see that there?

22 MR. McGRATH: Objection. Time off.

23 Q. That his last day of service would be May 20,

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1 A. Whether or not it was acceptable to have  
2 Dr. Galuten return.

3 Q. And do you know who was having that conversation?

4 A. I would only be speculating if I . . .

5 Q. Okay. Do you know if anybody from Medicus spoke  
6 with the hospital about whether they wanted him to  
7 return, whether the hospital wanted him to return?

8 A. It's my understanding that there was a conversation  
9 between a Medicus representative and the hospital  
10 about whether or not they wanted Dr. Galuten to  
11 return.

12 Q. Do you know who the Medicus representative was?

13 A. I don't.

14 Q. Do you know who the hospital representative was?

15 A. I don't.

16 Q. What were you told was the result of that  
17 conversation?

18 A. That they did not want Dr. Galuten to return.

19 Q. All right. Were you told why the hospital didn't  
20 want him to return?

21 A. Multiple issues. The first being the way that he  
22 had treated a hotel clerk at a hotel that the  
23 hospital had a business relationship with where

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1 correct?

2 A. Correct.

3 Q. All right. After May 20, do you recall having any  
4 conversations with anybody about Dr. Galuten  
5 requesting to return to the assignment?

6 A. I do.

7 Q. And, first, with whom did you have this  
8 conversation?

9 A. Zac Rizzo.

10 Q. Do you recall if you discussed Dr. Galuten's  
11 potential return with anybody else?

12 A. Me personally, no.

13 Q. Okay. My question was whether you recalled having  
14 any conversations with anybody else. I want to  
15 make sure I understand your answer.

16 You don't recall you having any other  
17 conversations with anybody else?

18 A. Correct.

19 Q. Do you understand that other conversations occurred  
20 among other people?

21 A. I believe they did.

22 Q. What do you understand were the conversations among  
23 others?

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1 they allowed other physicians to stay while  
2 covering at the hospital and that he had insulted  
3 that clerk. He had called 911 and requested a ride  
4 to the hospital. And he had made unreasonable  
5 requests of the hotel staff and that he was no  
6 longer allowed to return to that hotel.

7 That after some analysis, the amount of  
8 work that Dr. Galuten was completing relative to  
9 the amount of hours that he was working was subpar  
10 to what the traditional expectations are for a  
11 radiologist.

12 Q. Can you think of any other issues? I'm sorry. I  
13 was waiting for you to say more. You had said  
14 there were multiple issues. You've identified  
15 issues relating to the hotel, and you just  
16 mentioned the volume of work he was completing  
17 relative to the hours that he was reporting  
18 seemed -- was subpar for radiologists.

19 A. Correct.

20 Q. Can you think of any other issues that the hotel  
21 identified as to why they didn't want him back?

22 MR. McGRATH: You mean the hospital?

23 MR. HOWARD: I do mean the hospital.

1 A. Correct.

2 MR. HOWARD: Objection. Go ahead.

3 Q. Well, maybe I'm confused.

4 Explain what you understood was the  
5 substance of your conversation with Dr. Galuten on  
6 the 14th to the best that you're able to recall.

7 A. I was very clear with Dr. Galuten that if he  
8 couldn't give us a date to return, that his -- we  
9 would not be able to continue to use him in the  
10 schedule and to provide coverage and that his  
11 contract was terminated. I made the decision not  
12 to allow Dr. Galuten back into the schedule on or  
13 around that date.

14 Q. Before you tell me about -- I think you were going  
15 to tell me about the reasons for that, but before  
16 you do, when you talk about letting him back into  
17 the schedule, what does that mean?

18 A. That means that Dr. Galuten would contract with us  
19 to provide new dates of coverage.

20 Q. Okay. So there would be a new Schedule A, for  
21 example?

22 A. There would be a new Schedule A.

23 Q. And that's what you were testifying to a few

1 May 14?

2 A. I'm certain that when I had the conversation with  
3 him on May 14, that was one of the issues that we  
4 had experienced with Dr. Galuten that had created  
5 concerns for me in having him return to that  
6 hospital.

7 Q. Okay. So it was on your mind when you were having  
8 the conversation on May 14? You knew about the  
9 hospital incident at that time? The hotel  
10 incident. Excuse me.

11 A. I just know that it was a part of why I made the  
12 decision not to allow him to return.

13 Q. Well, I thought you had explained to me before that  
14 that was based on conversations you had in early  
15 June with Nicole, Zac, or Patrick?

16 MR. McGRATH: Objection.

17 A. I'll restate my position: Dr. Galuten -- we were  
18 not going to sign a new Schedule A, a new contract,  
19 with Dr. Galuten. He was in breach of the one that  
20 we had in place. He was contracted to cover -- I'm  
21 not sure -- 16 weeks. He covered three, and then  
22 given us notice that he could not tell us when he  
23 would be able to return.

1 minutes ago when Attorney Howard was asking you?

2 A. Yes.

3 Q. Okay. So you were -- you were about, I think, to  
4 tell us the reasons why you decided not to enter  
5 into a new Schedule A with Dr. Galuten.

6 What were the reasons for that?

7 A. The primary reason was his lack of ability to  
8 commit to a return date and our responsibility to  
9 cover 100 percent of the schedule.

10 In addition to that, it was the issues  
11 that I had mentioned earlier: His behavior at the  
12 hotel, his assumption it was okay to work those  
13 hours of overtime without preapproval, calling 911  
14 to give him a ride to the hospital. Those issues,  
15 in conjunction with "I can't tell you when I'm  
16 going to return to work" helped me decide that we  
17 were not going to sign a new Schedule A with  
18 Dr. Galuten.

19 Q. Thank you. I have nothing further.

20 EXAMINATION

21 Q. BY MR. HOWARD: I need to follow up.

22 You are certain in your mind you knew  
23 about the hotel incident when you talked to him on

1 I remember making a decision that we were  
2 not going to sign a new contract with Dr. Galuten.  
3 There were multiple factors that weighed into that  
4 decision. The primary one being no specific date  
5 of return.

6 The other issues weighed in my decision  
7 either at that point in time in May or when  
8 Dr. Galuten notified us that he wanted to return.

9 Q. One of the issues that you just articulated in  
10 response to Attorney McGrath's question was the  
11 amount of overtime that he was doing without  
12 preapproval.

13 You would agree with me, first of all,  
14 that you had not identified that prior to Attorney  
15 McGrath's question in response to any of the  
16 questions that I asked you?

17 A. I believe we discussed overtime previously as being  
18 one of the issues.

19 Q. What you said to me before was the volume of work  
20 he was concluding in relation to the amount of  
21 overtime.

22 A. Correct.

23 Q. And now you seem to be saying an issue is the